

NO. PD-1339-18

TO THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF TEXAS

FILED  
COURT OF CRIMINAL APPEALS  
5/28/2019  
DEANA WILLIAMSON, CLERK

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HAROLD WAYNE HOLOMAN, APPELLANT

VS.

THE STATE OF TEXAS, APPELLEE

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Appealed in the 12<sup>TH</sup> Court of Appeals  
Tyler, Texas  
No. 12-17-00364-CR

Trial Court Cause No. 349CR-15-32178  
Pamela Foster Fletcher, Judge Presiding

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APPELLANT'S BRIEF ON THE MERITS

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COUNSEL FOR APPELLANT

## IDENTITY OF JUDGE, PARTIES, AND COUNSEL

- The parties to the trial court's judgment are Appellant, Harold Wayne Holoman and Appellee, the State of Texas
- The trial judge was Hon. Pamela Fletcher, 349<sup>TH</sup> Judicial District Court, Anderson County Courthouse, 500 N. Church St., Room 30, Palestine TX 75801.
- Counsel for Appellant at trial was Scott Nicholson, 901 N. Perry St., Palestine TX 75801.
- Counsel for Appellant on appeal was Wm. M. House, Jr., 800 N. Church St, Palestine TX 75801.
- Counsel for the State at trial were Scott Holden, Brenda Hicks Johnston, and Sanju Cherian, Assistant District Attorneys, 500 N. Church St., Room 37, Palestine TX 75801.
- Counsel for the State before the 12<sup>TH</sup> Court of Appeals was Scott Holden, First Assistant District Attorney, 500 N. Church St., Room 37, Palestine Texas 75801.
- Counsel for the State before this Court is Emily Johnson-Liu, Assistant State Prosecuting Attorney, PO Box 13046, Austin TX 78711.

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## INDEX OF AUTHORITIES

### CASES

*Olivia v. State*, 548 S.W.3d 518 (Tex. Crim. App., 2018)\_\_\_\_\_6

### STATUTES

Tex. Penal Code  
§12:43\_\_\_\_\_6

NO. 12-17-PD-1339-18

TO THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF TEXAS

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HAROLD WAYNE HOLOMAN, APPELLANT

VS.

THE STATE OF TEXAS, APPELLEE

---

Appeal from Anderson County  
No. 12-17-00364

---

APPELLANT'S BRIEF ON THE MERITS

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TO THE HONORABLE COURT OF CRIMINAL APPEALS:

The 12<sup>TH</sup> Court of Appeals properly held that the recidivist family violence enhancement is a guilt phase issue because it is jurisdictional. Texas Penal Code §12.43 is the only provision related to penalties for repeat and habitual misdemeanor offenders, and does not provide for raising a Class A misdemeanor to any level of felony at the punishment phase of the trial.

STATEMENT REGARDING ORAL ARGUMENT

The court did not grant argument.

STATEMENT OF THE CASE

Appellant agrees the State's description of the Statement of the Case.

GROUND FOR REVIEW

Can a misdemeanor conviction during the guilt phase be raised to any level of felony during the punishment phase, contrary to Texas Penal Code §12:43?

### STATUTE AT ISSUE

Contrary to the State's position that the various Sections of Texas Penal Code 22.01 allows the enhancement from a misdemeanor to a felony, depending upon when the prior offenses are introduced, Appellant argues that there are no provisions that allow enhancement of a misdemeanor conviction to a felony during the punishment phase of trial.

### STATEMENT OF FACTS

Appellant agrees with the State's rendition of the relevant statement of facts.

### SUMMARY OF THE ARGUMENT

Appellant agrees with the first sentence of the State's argument on page seven of the State's Brief on the Merits:

Jurisdictional priors have long been treated as elements of the offense, in large part because of Code of Criminal Procedure Article 36.01.

The Court of Appeals properly ruled that to enhance a misdemeanor assault to a felony, there must be proof during the guilt/innocence of the prior convictions. There is no statutory provision for elevating a misdemeanor conviction to a felony during the punishment phase of a criminal trial. This, again, is contrary to Texas Penal Code §12:43.

### ARGUMENT AND AUTHORITIES

This is exactly the situation we have in the instant case where the alleged prior conviction for family violence was not introduced until the penalty phase.



The Olivia case cited in the State's brief supports that finding.


### CONCLUSION

The Appellant again points to the fact that §12.43 of the Texas Penal Code is the only statutory provision for enhancement of misdemeanor convictions at the punishment phase, and therefore the Court of Appeals was correct in its ruling.

### PRAYER

WHEREFORE, PREMISES CONSIDERED, Appellant prays that the Court of Criminal Appeals reman the case to the trial court for a punishment hearing for a Class A misdemeanor, pursuant to Texas Penal Code §12.43.

Respectfully submitted,

  
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### CERTIFICATE OF SERVICE

I hereby certify service on May 24, 2019 of a true and correct copy of the above and foregoing document, upon:

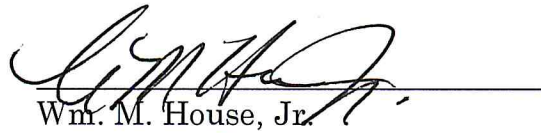
- 1) State of Texas Prosecuting Attorney via electronic service, as well as first class U.S. mail:  
Emily Johnson-Liu (PO Box 13046, Austin TX 78711)  
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- 2) Anderson County District Attorneys' office:
  - a) Electronic service to Allyson Mitchell and Scott Holden, and
  - b) Email to [byates@co.anderson.tx.us](mailto:byates@co.anderson.tx.us) via <https://efile.txcourts.gov>

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**CERTIFICATE OF COMPLIANCE**

This document contains 914 words.

  
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